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December 4, 2018

VIA OVERNIGHT MAIL AND EMAIL

Christopher Saporita, Esq.
Office of General Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

RE: Norlite, LLC Administrative Order: EPA Docket No. CAA-02-2016-1004
Follow-up to November 5, 2018 submission

Dear Mr. Saporita:

I am submitting this letter in response to your November 7, 2018 email on the November 5, 2018 submission of Norlite, LLC (Norlite) concerning the allegations that Norlite exceeded certain operating parameter limits (OPLs) established in its 2011 comprehensive performance test (CPT) of the lightweight aggregate kilns at its facility in Cohoes (the Facility). As discussed in that submission, during the period in question (2012-2014), the Facility was subject to a hazardous waste permit that contained OPLs from the 2004 CPT, which differed from the OPLs in the 2011 CPT. For the reasons set forth below, Norlite continues to believe that EPA is evaluating Norlite's compliance status based on the wrong set of OPLs and that the Facility did not exceed the OPLs that applied during the relevant period.

In your November 7, 2018 email you declare, among other things, that "there is no evidence that Norlite could not have complied with both its hazardous waste permit limits and the 2011 OPLs since, for the four OPLs at issue in this matter, the company could have simply complied with the more stringent limits and been in compliance with both sets of requirements." This statement is not accurate.

The New York State Department of Environmental Conservation (DEC) has been delegated responsibility for implementing various maximum achievable control technology (MACT) standards under the National Emission Standards for Hazardous Air Pollutants (NESHAP) program, including 40 CFR Part 63, subpart EEE, the hazardous waste combustor MACT. As set forth in 40 CFR § 63.7(e)(1), "[p]erformance tests [under the NESHAP program] shall be conducted under such conditions as the Administrator specifies ... based on representative performance (i.e., performance based on normal operating conditions) of the affected source." In designing and approving the CPT protocols for the 2004 and 2011 CPTs, DEC's and Norlite's goal was to define the range of conditions (i.e., the "operating window") that would ensure that the Facility would not exceed applicable emission standards while at the same time maximizing the Facility's operational flexibility. Consistent with the provision cited above, the operating window must be representative of normal operating conditions. This overall goal is the basis for the performance test requirement in the MACT as well as the trial burn requirement under the Resource Conservation and Recovery Act (RCRA) hazardous waste program. A detailed CPT protocol was developed based upon input from the permittee on normal and achievable operating conditions that would meet the emission standards. The protocol was then approved by the responsible agency—in this case, DEC—and implemented over a period of several days consistent with the approved CPT protocol. Region 2 was also provided a copy of the CPT protocol for review and comment. During the course of the test, DEC was present on site working with Norlite and the third party testing contractors. During this process, the operation of the equipment and other conditions were continuously adjusted in an attempt to define the range of conditions (i.e., the operating window) under which the Facility could operate while meeting the applicable regulatory emission limits. Each CPT is a unique event driven by a host of factors, including weather and other external conditions, the particular state of the equipment, the dependent operational parameters that directly and indirectly affect one another and, most important, past operating experience.

Upon completing the CPT, each parameter in the approved operating window was assigned an alarm number and an automatic waste fuel cutoff (AWFCO) limit. If the particular parameter is approaching the OPL, an alarm will trigger indicating to the operators that there may be a problem. If the problem cannot be immediately corrected following the sounding of the alarm and the condition continues, hazardous waste feed to the kiln(s) is automatically cut off at the AWFCO limit and a new fuel, (spec oil) is introduced into the kiln. AWFCOs are destabilizing events because the switching of fuels affects the homeostasis of the combustion process. Because that destabilization has the potential to increase emissions from the kiln, DEC and Norlite are continuously working together to avoid and minimize AWFCOs.

Because each CPT protocol is based on a unique range of conditions (i.e., operating window) that is normal and achievable and will comply with the applicable emission standards, Norlite and DEC (the delegated agency under the NESHAP and RCRA programs) could not simply pick and choose on a parameter-by-parameter basis from among the operating windows established via the two different CPTs conducted several years apart pursuant to separate approved protocols. Norlite and DEC had to choose either the operating window from 2004 CPT (incorporated into the 2008 Part 373 permit) or the operating window from 2011 CPT. As the chart below shows, the 2004 operating window was less stringent for some parameters while the

2011 operating window was less stringent for others. The more stringent values are highlighted in yellow.

	Max/Min (Units)	2008 373 Permit	2011 CPT
Process & CEM Parameters --			
Total (and Pumpable) LLGF Feed	Max (gpm)	10.3	10.5
Kiln Production Rate (Shale Feed)	Max (tph)	22	22.8
LLGF Atomization Pressure	Min (psig)	54	35.9
Back End Temperature	Min (°F)	871	895
Heat Exchanger Exit Temperature	Max (°F)	450	436
Flue Gas Flowrate	Max (wet scfm)	45,000	45,625
CO Conc.	Max (ppm, dry basis)	100	100
APCS Parameters --			
Baghouse Inlet Temperature	Max (°F)	398	400
Venturi Pressure Drop	Min (in w.c.)	3.2/2.9	6.1
Scrubber Recirculation Rate	Min (pgm)	190	174.7
Scrubber Blowdown Rate	Min (gpm)	16.2	14.6
Scrubber Liquid pH	Min	7.9	8.1
Scrubber Tank Liquid Level	Min (% of tank height)	45	58
Scrubber Liquid to Gas Ratio	Min (gpm/1000 scfm)	4.1	4.9
Lime Feed Rate	Min (lb/hr)	3.2 x lb/hr of Chlorine Feed	250
Lime Carrier Fluid Flow Rate	Min (cfm)	175	151.8
Constituent Feed Rates --			
Total Chlorine	Max (lb/hr)	82.3	119.2
Total SVM (Cd & Pb)	Max (lb/hr)	*	29.3
Total LVM (As + Be + Cr)	Max (lb/hr)	*	16.6
Total Pumpable LVM	Max(lb/hr)	*	5.55
Total Mercury	Max lb/hr)	0.0064	0.036

*Note: Prior to the 2011 CPT-NOC, Norlite was required to comply with the individual metal mass feed rates for 14 permit metals instead of the summation of metals including the SVM and LVM.

Because the 2004 operating window (and its associated alarms and AWFCO parameters) was incorporated into the 2008 Part 373 permit, Norlite could not adopt the 2011 operating window (and new alarms and AWFCO parameters) unless DEC first modified the Part 373 permit, as required by 6 NYCRR Part 373-1.7. From DEC's and Norlite's perspective, mixing and matching between two different operating windows from two different CPTs was not an alternative contemplated under the Part 373 permit and/or the MACT. The two CPTs were conducted under separate approved protocols several years apart representing two unique set of operating conditions and yielding two different sets of OPLs. The operating window (or OPLs) had to be based upon one CPT conducted pursuant to an approved protocol. DEC never approved a CPT protocol for establishing the "mixed and matched" OPLs, and no CPT was conducted to establish those limits. A "mixed and matched" operating window from two or more CPTs conducted several years apart may not be representative of normal operating conditions as required by the NESHAP performance testing regulations. Most importantly, operating parameters are interrelated and the kiln and air pollution control systems must be considered as an "integrated system." Therefore, you cannot pick and choose selected parameters in isolation. From a practical perspective, adopting a mix and match operating window with the stricter OPLs from two different CPTs would have resulted in unnecessary additional AWFCOs and possibly more emissions from a less stable combustion process. In light of these considerations, the only alternative was to adopt either the 2004 operating window and/or the 2011 operating window. Since the 2004 operating window was required by the Part 373 permit, it was up to DEC to modify that permit.

In its November 7, 2018 email, EPA also contends that Norlite has provided "no evidence of any communications between Norlite and DEC regarding whether Norlite could or should comply with the 2011 OPLs, much less any 'determination' by the DEC that those OPLs should be ignored." That statement is based upon a lack of knowledge regarding the day-to-day operations at Norlite and DEC's regulation of Norlite's daily activity. Norlite's original Part 373 permit took over eight years to develop (1984 to 1992). That permit, and its successors, regulated every aspect of Norlite's hazardous waste activity, including the operation of the kiln, the hazardous waste feed to the kiln, the allowed waste components, the waste acceptance procedures, laboratory analyses, monitoring equipment, reporting, and daily, weekly and monthly inspections. Until 2015, that permit also specifically regulated air emissions from the kilns, including the establishment of (and compliance with) operating windows/OPLs. As noted in our November 5, 2018 letter, because of problems/delays associated with updating Norlite's Title V permit, the Part 373 hazardous waste permit largely governed day-to-day operation of the kilns during the period in question.

The kiln—and the issue of AWFCOs—continue to be a key focus of the Department's attention. To minimize AWFCOs, Norlite implemented an extensive program to train kiln operators on monitoring the alarms and other non-regulatory parameters, visual observation of the kiln, how to respond to an alarm to avoid an AWFCO, and how to adjust conditions in the kiln after an AWFCO. As noted in our original submission, during the relevant time period, the kiln operators (together with the compliance staff) completed WFCO testing parameters sheets which identified and tracked the applicable OPLs. Each month, Norlite conducts a test of each of the different parameter's AWFCO. A sheet documenting the test results is available to DEC

staff, and Norlite must submit a written report to DEC if the number of monthly AWFCOs exceeds a specified threshold which identifies the causes of the AWFCOs and the steps taken to reduce them.

During the relevant period, the WFCO testing sheets clearly indicated the applicable OPLs and their regulatory origins (MACT and/or RCRA). Regulators visiting the Facility were thus aware of what OPLs were in place and what program they were intended to satisfy. As previously noted, Norlite could not change the operating window settings for the AWFCO incorporated into the Part 373 permit without a Part 373 permit modification from DEC.

More generally, Norlite was and is one of the most heavily regulated and closely supervised facilities in New York State. In order to ensure compliance with the Part 373 permit, Norlite funds a full-time on-site DEC monitor (complete with office) at its facility. The on-site monitor oversees all aspects of Norlite's operations and has unrestricted access to all required documentation concerning operation of the kilns.

In addition, before and during the relevant period, staff from DEC's Divisions of Air and Hazardous Waste and EPA staff inspected the Facility to assess its compliance with applicable air and hazardous waste program requirements.

DATE OF INSPECTION	AGENCY INVOLVED	INSPECTION TYPE
1/17/2008	NYSDEC	Biennial Air Inspection
3/31/2008	NYSDEC	Biannual RCRA Incineration Inspection-
7/16/2009	NYSDEC	Inspection
7/26/2010	NYSDEC	Biennial Air Inspection
2/23/2011	USEPA	Response to odor complaint and evaluation with MACT standards
6/27/2012	NYSDEC	Biennial Title V Air Inspection
12/6/2012	NYSDEC	Biannual RCRA Incineration Inspection
9/24/2014	NYSDEC	Regional and Central Office NYSDEC inspectors conducted a biennial Title V Air Inspection

During the relevant period, Norlite submitted dozens of reports and other information to DEC and/or EPA, including reports that were specifically tied to Norlite's compliance with its OPLs. Examples of these reports include the exceedance reports referenced in Norlite's November 5, 2018 submission, semiannual MACT exceedance reports and Title V compliance reports submitted on a semiannual and annual basis.

At no time from 2012-2014 did DEC—the agency delegated by EPA to implement Subpart EEE—conclude based on inspection results, mandatory submissions, or feedback from the on-site DEC monitor that Norlite was implementing the wrong OPLs and/or that Norlite had exceeded its OPLs. Given the intense nature of agency oversight of Norlite's operations, it is inconceivable that DEC was not aware of, and had not approved, the settings for the alarms and AWFCOs.

Tradebe purchased the stock of Norlite in or about April 2011 at approximately the same time Norlite submitted the results of the 2011 CPT and Notice of Compliance to DEC. When Tradebe purchased Norlite, it implemented the OPLs previously established for the kilns. From Tradebe's perspective, there was no ambiguity concerning the appropriate limits. DEC required Norlite to implement the OPLs and the corresponding AWFCOs required in the Part 373 permit to satisfy both its hazardous waste and Subpart EEE obligations.

Norlite acknowledges that EPA is the author of the MACT standard and that it has its own interpretation of that standard which disagrees with the interpretation implemented by DEC and Norlite during the period 2012 through 2014. From EPA's perspective, DEC and Norlite should have implemented the operating window from the 2011 CPT. However, Norlite was required to comply with the OPLs established during the 2004 CPT test that were incorporated into the Part 373 permit. It could not comply with the stricter OPLs established in the 2011 CPT without compromising its ability to meet its RCRA limits and potentially violating its Part 373 permit. The only way to address the problem was for DEC modify the Part 373 permit to incorporate the OPLs from the 2011 CPT, which it did not do.

Norlite has an obligation to protect the environment. As previously stated, adopting a mix and match operating window with the stricter OPLs from two different CPTs would have resulted in unnecessary additional AWFCOs and possibly more emissions from a less stable combustion process.

Norlite has over 70 employees, several of whom are the third generation in their family to work at the Facility. The Facility—which operates 24 hours a day 7 days a week—pays a living wage and provides health insurance. The Facility has obligations to customers to supply lightweight aggregate and obligations to hazardous waste generators to accept and process their waste.

In order to conduct its operations, Norlite and other companies require regulatory certainty. Where EPA delegates authority to implement a program to the State, it cannot and should not second guess the State's decision without a very good reason. In this case, DEC adopted a strategy for reconciling Norlite's RCRA and MACT obligations that led to the establishment of specific OPLs for the Facility. EPA is now arguing that Norlite should have complied with a different set of OPLs and is seeking to punish Norlite for simply complying with the limits set by the State. If EPA is going to upset this delegated relationship and eliminate the certainty promised by RCRA and Clean Air Act, it should do so only when it is in the best interest of the environment and the local community. In this case, EPA cannot show that Norlite's compliance with the OPLs approved by DEC and incorporated into the Part 373 hazardous waste permit caused any harm to the environment. To the contrary, compliance with

the "mixed and matched" OPLs as suggested by EPA would have increased AWFCOs and so resulted in more, not less, emissions.

Norlite is currently the only industrial furnace using hazardous waste as an alternative fuel source in New York State and for that matter EPA Region 2. The Facility has survived where other have failed because it works closely, and has open communications with, DEC (even when it is not in Norlite's favor). When the EPA Region 2 Director spoke at a League of Women Voters function in Albany in September, he noted the importance of a strong enforcement program, while at the same time emphasizing that enforcement should be used as a tool to protect real people and to go after bad actors. The violations discussed above do not meet these criteria.

As discussed during our meeting in September, Tradebe is planning to make a significant investment in the Norlite facility to install state-of the-art air pollution controls that will also eliminate process wastewater. A recent Times Union article describing the project is enclosed.

To emphasize the importance of this matter to Norlite, this letter is being executed both by Kevin Young, the attorney for Norlite, and by Sergio Nusimovich, Norlite's Chief Operating Officer, who was present at the September 11, 2018 with you and your staff at EPA's office in New York. Mr. Nusimovich is cosigning this letter because we are sending a copy directly to EPA Regional Director Peter Lopez and asking him to meet with EPA staff at Norlite's facility before the parties exchange any additional correspondence to resolve this matter. A site visit will provide EPA an opportunity to better understand the $30 million modernization project as well as EPA's enforcement posture.

Thank you for your time and consideration, and I look forward to hearing from you.

Very truly yours,

Kevin M. Young

Sergio Nusimovich

cc: Peter Lopez, Regional Administrator, EPA Region 2
Enclosure

timesunion
https://www.timesunion.com/7dayarchive/article/Cohoes-hazardous-waste-incinerator-plans-30m-13425204.php

Cohoes hazardous waste incinerator plans $30m upgrade

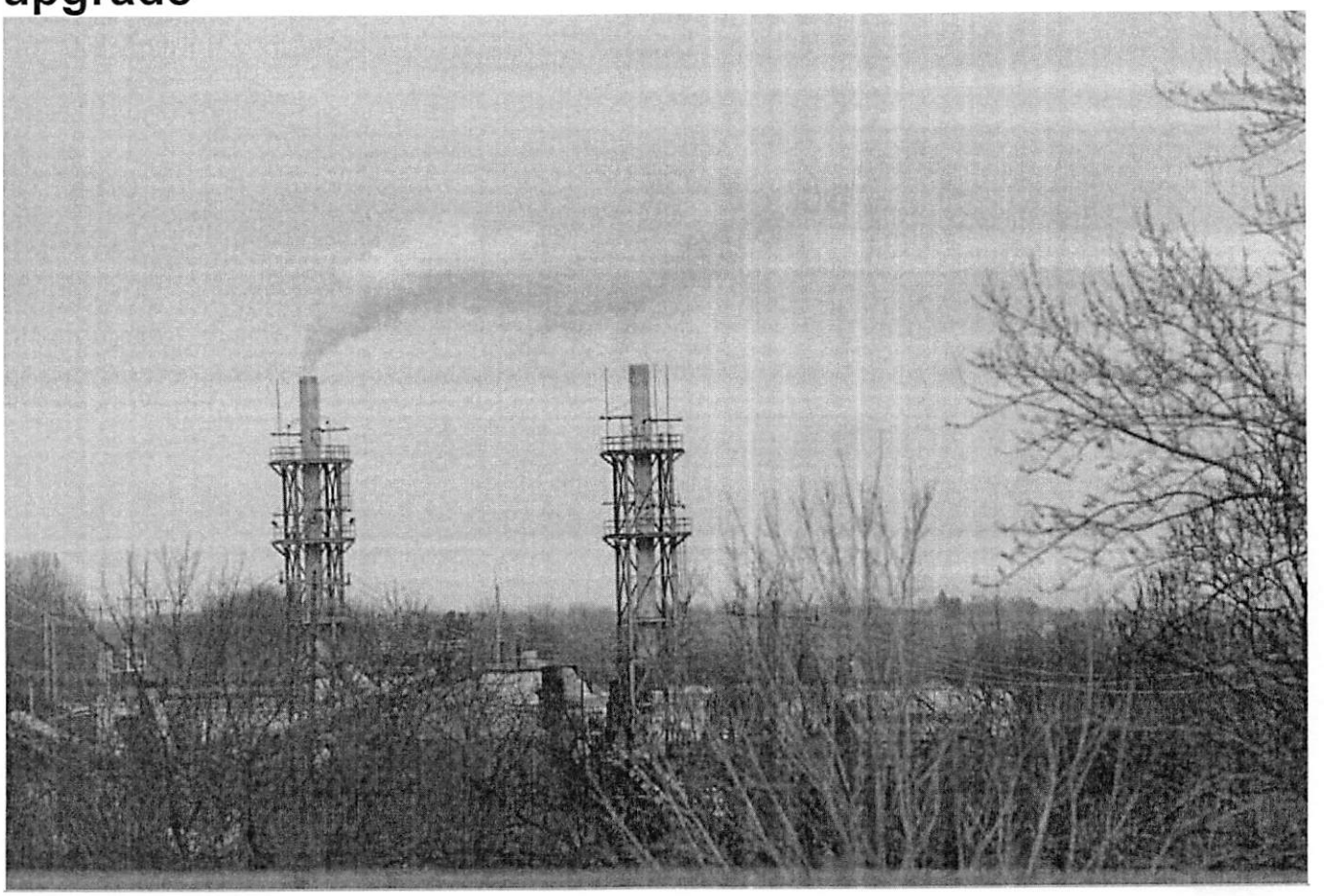

IMAGE 1 OF 5

Onwers of the Norlite hazardous waste incinerator are planning a $30 million project to update pollution controls on the plant's two high-temperature kilns. (Paul Buckowski / Times Union archive)

Cohoes

Owners of the state's only commercial hazardous waste incinerator are planning a $30 million upgrade to the plant's air pollution control system.

Norlite is seeking state permission to upgrade two high-temperature kilns that burn hazardous waste

during production of crushed stone into construction aggregate at the Route 32 facility.

In operation since 1955, the 250-acre Norlite plant is one of only two in the country that make aggregate by burning liquid hazardous waste in two kilns at more than 2,000 degrees Fahrenheit to heat and expand shale rock.

Norlite is paid by industrial customers from as far away as Ohio, Maine, Maryland and Delaware that truck in waste, which is pumped into storage tanks. The waste is blended before being piped to burners in two kilns that date to the plan's opening.

Neighbors there have long complained about unusual odors and accumulations of grit. In 2010, the plant owners were fined $90,000 by DEC and required to modernize the air pollution equipment of the aging kilns.

The new system will replace scrubbers that use water to clean exhaust gases with a system that does not rely on water, which will eliminate discharges of treated wastewater into the nearby Mohawk River.

Mercury and other toxic pollution removed by incinerator exhaust pollution controls is treated before being discharged into the city storm sewer system, where it empties into the Mohawk River.

"The investment in Norlite will have a positive environmental impact along with the facility improvements. Growth and sustainability is beneficial for the community, the environment, Norlite personnel and regional industry," said Sergio Nusimovich, chief operating officer for Norlite owner Tradebe Environmental Services.

Tradebe is part of a Spanish conglomerate that bought the plant in 2011. Tradebe operates hazardous and non-hazardous waste treatment and recycling facilities in the U.S., Spain, France and the United Kingdom.

The new pollution controls would allow Norlite to burn more hazardous waste and produce more construction aggregate, according to a July 2018 application that the company filed with the state Department of Environmental Conservation.

In September, DEC officials issued a notice of incomplete application for the application. The agency is requiring Norlite to comply with an agency environmental justice policy as part of its application.

Created by DEC in 2003, the policy is meant to protect low income or predominantly-minority areas from potential adverse environmental impacts. The policy requires project developers to create plans to inform the public about their projects, to hold public meetings, and to create reports that summarize concerns and potential solutions.

Norlite Environmental Compliance Manager Prince Knight said on Tuesday that Norlite will comply with DEC's demand to follow environmental justice rules.

He said the new equipment would allow the plant to burn more hazardous waste to produce more construction aggregate, all while remaining within allowable pollution limits.

Norlite officials hope to begin construction on the project next spring and finish in early 2020, according to a company press release.

In 2010, DEC hit the plant's previous owners with a $90,000 fine for 62 pollution violations under the U.S. Clean Air Act for burning an improper mix of hazardous waste between November 2008 and April 2009.

As part of that agreement, the company agreed to make repairs to the kilns.